
(2011) 07 KL CK 0173
In the High Court Of Kerala
Case No : W.A. No. 1872 of 2010

Sapna Maria Gomez

APPELLANT

Vs

The University of Kerala and Another

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Kerala University First Statute — Clause 10(4), Clause 10(5)

Citation : (2011) 3 KLJ 640 : (2011) 3 KLT 80 SN

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : T.P. Deyananthan, John K. Joseph and Seema R.S., for the Appellant; M. Rajagopalan Nair (SC), Kurian George Kannanthanam and Lal George, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—It is strange that the Appellant, a female member of the minority community, has to seek assistance from this Court to get employment in the 2nd respondent institution, which is established and run essentially for the benefit of the community to which the Appellant belongs. The Appellant's grievance is that in spite of the excellent academic record she has and the selection she got for appointment to the post of Lecturer in English, the 2nd respondent College deliberately refused to fill up the permanent posts lying vacant only to defeat her claim. Even though on Appellant's application, the University directed the 2nd respondent to consider her for appointment from the select list, the 2nd respondent refused which dragged the Appellant to this Court. The learned Single Judge without appreciating the scope of the statutory provisions which entitles the Appellant to get appointment in the permanent vacancy available in the 2nd respondent College during the currency of the select list, rejected the Appellant's claim in her case. Hence she is in appeal before us. We have heard learned counsel appearing for the Appellant, learned Senior counsel Shri. Kurian George Kannanthanam appearing for the 2nd respondent

and learned Standing Counsel appearing for the University.

2. Appellant's grievance developed as follows. The Appellant is a Post Graduate in English with first class and 6th rank and has passed the National Eligibility Test (UGC) and the State Eligibility Test (State) which qualify her for appointment as Lecturer in English in any College affiliated to the 1st respondent University. Two of the permanent Lecturers in the English Department of the 2nd respondent College were retiring on 31/03/2010. Besides the two vacancies arising on account of the retirement, the Government vide Annexure B order dated 24/06/2009 sanctioned three additional permanent posts of Lecturers in English in the 2nd respondent's college. The 2nd respondent vide Annexure A notification published in the newspapers on 27/07/2009 invited applications for appointment of Lecturers in the College in various subjects including English. It is pertinent to note that number of vacancies available or proposed to be filled up were not stated in the notification and all what the notification says is that posts of lecturers against permanent vacancies are proposed to be filled up. Under the notification 50% of the posts are reserved for community quota (Latin community) to which the Appellant belongs and the remaining 50% only will be filled up by merit quota. Pursuant to Annexure A notification, the selection committee conducted interview and prepared the select list, a copy of which is obtained by the Appellant under the Right to Information Act. Ext.P1 is the proceedings of the selection committee dated 10/10/2009 wherein separate select lists were prepared for appointments under merit quota and under community quota. Candidates with Rank Nos. 1 & 2 in the merit list and Rank No. 1 in the community list were appointed. Even though two permanent posts of Lecturers fell vacant from 01/04/2010 onwards, the 2nd respondent refused to fill up the said posts from the select list prepared just six months back. Since Ext.P1 select list was prepared on 10/10/2009 and its validity is one year from the date of preparation i.e. up to 09/10/2010, the Appellant's case is that besides the three additional permanent vacancies sanctioned by the Government, two permanent vacancies that arose on 31/03/2010 on account of retirement of two Lecturers in the English Department should be filled up from Ext.P1 list. Admittedly, there is no dispute with regard to the availability of two more permanent posts to be filled up in the English Department, which arose on 31/03/2010 i.e. during the currency of Ext.P1 select list prepared by the Committee appointed by the 2nd respondent which select list is approved by the University. The next candidate to be appointed from the list is the Appellant, and according to the Appellant, if the balance two permanent vacancies available are also filled up from Ext.P1 select list, the Appellant will be the first to get appointment. The specific case of the 2nd respondent is that even though number of candidates proposed to be filled up was not mentioned in Annexure A notification, it was issued only to fill up the additional posts sanctioned by the Government vide Annexure B order, and so much so, the list has no relevance or validity after three persons were appointed from the list. The Appellant's case is that under Annexure A notification, the 2nd respondent proposed to fill up all

permanent vacancies and it is specifically stated so, and the contention now raised by the 2nd respondent that the permanent vacancies that arose from 01/04/2010 onwards cannot be filled up from the select list prepared is only to deny appointment to the Appellant.

3. While the learned counsel for the Appellant has referred to the provisions of the Kerala University (Conditions of Service of Teachers and Members of Non-Teaching Staff) First Statutes 1979, particularly Clause 10(5) thereof under which the select list prepared by the Selection Committee shall remain in force for a period of one year which entitles the Appellant for appointment, the learned Senior counsel appearing for the 2nd respondent relied on the decision of the Supreme Court in State of Orissa and Another Vs. Rajkishore Nanda and Others etc. etc., , the decisions of the Division Bench of this Court in Manager, M.M. High School Vs. Deputy Director of Education and Others, and in Shalini Rachel v. Manager, Christian College, reported in 2007(3) KLT 355 and contended that posts notified only can be filled up from Ext.P1 select list and thereafter the select list ceases to be in force.

4. After hearing both sides and after going through the judgment of the learned Single Judge, the documents and the provisions of the Kerala University Statute above referred, we are of the view that the Appellant is entitled to succeed. Admittedly, the University Statute referred to above is the law applicable for selection for appointment of teaching staff in the 2nd respondent College. We extract hereunder the relevant provisions of the Statute, with reference to which the Appellant's entitlement has to be considered.

2. Definitions.-(1) In these Statutes, unless the context otherwise requires:-

(a) "Academic Year" means a period of twelve months commencing on the first day of June.

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(i) "Substantive Vacancy" means a vacancy which has arisen permanently by reason of the retirement of a person holding a permanent appointment in that post or by reason of a temporary post being made permanent by an order of the competent authority or by reason of the termination or suspension of the lien of a person holding a permanent appointment in post that.

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10. Method of selection of teaching staff by Educational Agencies:-

(1)(a)The Educational Agency shall have the option to have all the members of the teaching staff selected purely on the basis of merit from candidates of all communities or reserve every alternate vacancy or 50% of the vacancies for

being filled up on the basis of merit from among candidates of any particular community to be specified by the Educational Agency.

(b) The Educational Agency shall specify in the advertisement to be made under Statute 3 as to whether the selection is for an open vacancy or for a vacancy reserved for the members of a particular Community. In the former case, applications shall be invited from among all the qualified persons who are interested in getting the appointment and in the latter, applications shall be invited only from among the qualified members of the Community.

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(2) The method of selection specified in clause (1) shall apply to all vacancies which arise in all departments of the colleges under the Educational Agency, indicate in The Educational Agency shall clearly Committee as its to how the vacancies have occurred statement before the Selection and whether the vacancies for which interview is to be conducted falls within the merit quota or in the quota reserved for the community. The Selection of a candidate from the community shall be based on merit.

(3) select The on the basis of merit and appointments Selection Committee shall prepare the list shall be made only in the order of merits as indicated in the list. No candidate who has been included in the select list on the basis of merit shall be passed over by a person ranked lower in the same list Where candidates are bracketed for merit purposes, the selection committee shall specifically mention that fact in the list

(4) The select list prepared by the Selection Committee shall not normally contain more than three times the number of vacancies likely to arise within one academic year. In case the selection committee proposes to include more names in the list, it A shall record the reasons for the same.

(5) select list prepared by the Selection Committee shall remain in force only for a period of one year.

5. It is an admitted tact that the constitution of the selection committee by the 2nd respondent and the selection made are in accordance with the above provisions of the University Statute. Clause 10(4) specifically states that the selection committee shall not prepare select list with more than three times the number of vacancies likely to arise within one academic year. Ext.P1 select list prepared by the selection committee on 10/10/2009 contains ten candidates, six in the merit list and four in the community merit list The number of candidates selected is within the range for five permanent vacancies that are available in the 2nd respondent College in the English Department, which includes the two vacancies that arose after the preparation of the select list but within one academic year. What is clear from Sub Clause (4) of Clause 10 is that selection has to be made keeping in mind the permanent vacancies arising within one

academic year. Academic year as defined under Clause 2(1)(a) is the period of twelve months commencing from first June of every year. Therefore, Ext.P1 select list prepared in the academic year 2009-2010 will be valid up to 31/05/2010. It is specifically provided under sub Clause (5) of Clause 10 that select list prepared by the Selection Committee shall remain in force for a period of one year. Going by the scope of Sub Clauses (4) & (5) of Clause 10 the conclusion irresistible is that all permanent posts arising during the academic year should be filled up from the list prepared in that academic year. The list prepared on 10/10/2009 is valid up to 09/10/2010. All appointments could be made from this list for permanent vacancies existing and arising during the academic year ending on 31/05/2010. There is no dispute that two permanent vacancies arose in the English Department in the 2nd respondent College on retirement of two permanent Lecturers on 31/03/2010 and the said vacancies are available from 01/04/2010 onwards, which is in addition to the additional three permanent posts of Lecturers in the English Department sanctioned by the Government in the 2nd respondent College. So much so, going by the Rules, the Appellant is entitled to be appointed in one of the two vacancies that arose from 01/04/2010 onwards, which posts are still lying vacant in the 2nd respondent College.

6. The contention of the learned Senior counsel for the 2nd respondent that applications were invited only to fill up the additional three posts of Lecturers in English sanctioned by the Government cannot be accepted because Annexure A notification does not say so, and on the other hand, it specifically says that the notification invited is for filling up permanent vacancies in the subject concerned. Necessarily, the notification has to be taken as a proposal to make appointments in terms of the provisions of the Statute referred to above, which provides for preparation of select list with one year validity and appointment of all permanent vacancies arising within the academic year from the same list. So much so, we reject this contention raised by the 2nd respondent.

7. The only remaining question to be considered is whether denial of appointment to the Appellant by the 2nd respondent is justified by virtue of the above referred decisions of the Supreme Court and this Court. What we notice from the decision of the Supreme Court is that all what the Supreme Court has interdicted is not to make appointments from expired lists. Similarly in both the decisions of this Court referred to above, this Court had no occasion to consider the scope of Clauses 10(4) & (5) of the Kerala University First Statute. Admittedly, the 2nd respondent while inviting applications for the posts has not stated as to the number of vacancies proposed to be filled up. In fact, Annexure A notification clearly states that the posts proposed to be filled up are that of permanent Lecturers in the Departments referred to therein, one of which is the English Department. Therefore, the whole process of selection starting from Annexure A publication inviting applications ending up with the selection and appointments to be made from the select list should be in accordance with the provisions of the University Statutes, and the 2nd respondent has no authority to

violate the statutory provisions under which the Appellant has vested right for appointment by virtue of the selection made by the selection committee. Admittedly, the next vacancy to be filled up goes to the candidate in the community quota and the Appellant is the candidate in waiting under Ext.P1 select list in the community quota. Therefore, going by the statutory scheme stated and explained above, we hold that the 2nd respondent is not justified in denying appointment to the Appellant to the permanent post arising on account of retirement of two Lecturers on 31/03/2010. So much so, we are unable to uphold the findings of the learned Single Judge to the contrary. We, therefore, allow the Writ Appeal by vacating the judgment of the learned Single Judge with a direction to the 2nd respondent to appoint the Appellant as permanent Lecturer in English from Ext.P1 select list within two weeks of receipt of a copy of this judgment. The 1st respondent, thereafter, will consider approval of the same in accordance with the norms.

In view of the above findings, we have to conclude that injustice is done by the 2nd respondent to the next candidate in the merit list (Ext.P1) by denying appointment to her. In view of the legal position stated above and in fairness it is open to the management to appoint the next eligible candidate also.

This Writ Appeal is allowed as above.